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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/856,377	08/15/2001	Nigel Hugh Sanders	360.7416 USU	8319

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Paul D Greeley  
Ohlandt Greeley Ruggiero & Perle  
9th Floor  
One Landmark Square  
Stamford, CT 06901-2682

EXAMINER

PADEN, CAROLYN A

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 07/08/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/856,377

Applicant(s)

SANDERS, NIGEL HUGH

Examiner

Carolyn A Paden

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 August 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8-14, 17-27 is/are rejected.
- 7) ☒ Claim(s) 6, 7, 15 and 16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

#### Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (e) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) BRIEF SUMMARY OF THE INVENTION.
- (g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (h) DETAILED DESCRIPTION OF THE INVENTION.
- (i) CLAIM OR CLAIMS (commencing on a separate sheet).
- (j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if

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the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1, 8, 9 and 17 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Jury (GB 2,311,481).

Jury discloses the continuous extrusion of chocolate. In example 1, milk chocolate buttons are fed into the barrel of an extruder. Then a 50:50 mixture of water and glycol are fed into the barrel of the extruder and then water is introduced into the barrel of

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the extruder. This permits the chocolate to be extruded from the extruder.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jury in view of Gale.

Jury discloses the continuous extrusion of chocolate. In example 1, milk chocolate buttons are fed into the barrel of an extruder. Then a 50:50 mixture of water and glycol are fed into the barrel of the extruder and then water is introduced into the barrel of the extruder. This permits the chocolate to be extruded from the extruder. The claims appear to differ from Jury in the recitation of the use of a cavity-transfer mixer. Applicant admits at page 6, lines 1-2 of the specification that the preferred low-shear extruder is the one disclosed by Gale (EP 0048590). Gale teaches the use of an extruder mixer. At page 6, lines 27-31 the concept of using an extruder mixer in foods and viscous liquids is shown. At page 1 of Gale this type of mixer is shown to have an enhanced efficiency in mixing. It would have been obvious, at the time of applicant's invention, to utilize the extruder mixer of Gale in a chocolate process in order to enhance the efficiency of mixing.

Claims 1, 3-5, 8-14, 17-20 and 22-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takemori (US 5,160,760 or EP 0,393,327) in view of Jury.

Takemori discloses a chocolate product that contains a combination of a water in oil emulsion and chocolate. At example 1, sugar and water are combined with oil and an emulsifier to form a fluidized emulsion. This emulsion is then combined with milk chocolate. The products are mixed at 30C and then charged to a mold. The claims appear to differ from Takemori in the use of extrusion mixing. Jury discloses the continuous extrusion of chocolate. In example 1, milk chocolate buttons are fed into the barrel of an extruder. Then a 50:50 mixture of water and glycol are fed into the barrel of the extruder and then water is introduced into the barrel of the extruder. This permits the chocolate to be extruded from the extruder. At page 5 of the specification in Jury, the concept of including two or more fat-based confectionery materials as co-extrusions is described. It would have been obvious at the time of applicant's invention to utilized the extruder of Jury to mix the chocolate of Takemori in order to convert a batch mixing process to a continuous one in a chocolate making process. It is appreciated that

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the particular fats and oils that are shown in claim 23 are not in the reference but alternatives to cocoa butter, such as palm kernel and coconut oil, are typically used in chocolate manufacture.

Claims 2 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takemori in view of Jury as applied to claims 1, 3, 5, 8-14, 17, 18 20, 22 and 24-27 above, and further in view of Gale.

The claims appear to differ from Takemori in view of Jury in the recitation of the use of a cavity transfer low shear extruder. Applicant admits at page 6, lines 1-2 of the specification that the preferred low-shear extruder is the one disclosed by Gale (EP 0048590). Gale teaches the use of an extruder mixer. At page 6, lines 27-31 the concept of using an extruder mixer in foods and viscous liquids is shown. At page 1 of Gale this type of mixer is shown to have an enhanced efficiency in mixing. It would have been obvious, at the time of applicant's invention, to utilize the extruder mixer of Gale in a chocolate process in order to enhance the efficiency of mixing.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Claims 6, 7, 15 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in


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independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is 703-308-3294. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (703) 308-3959. The fax phone number for the organization where this application or proceeding is assigned is 703-305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

  
CAROLYN PADEN 7-1-03  
PRIMARY EXAMINER  
GROUP 1300 1761